



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

SMC  
Docket No: 04948-99  
17 February 2000

SSGT [REDACTED] USMC  
[REDACTED]  
[REDACTED]  
[REDACTED]

Dear Staff Sergeant [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

Your request to remove your summary court-martial (SCM) of 2 December 1993 was not considered, since the Board for Correction of Naval Records does not have the authority to grant such relief. They did, however, exercise their limited authority to review the sentence of the SCM as a matter of clemency.

A three-member panel of the Board, sitting in executive session, considered your application on 17 February 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) in your case, dated 4 August 1999, and the advisory opinion from HQMC 14 December 1999, copies of which are attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB and the advisory opinion in finding that the contested fitness report and the impliedly contested nonjudicial punishment of 2 August 1993 should stand, and that the sentence of the SCM should not be disturbed. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and

material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely, .

W. DEAN PFEIFFER  
Executive Director

Enclosures



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
3280 RUSSELL ROAD  
QUANTICO, VIRGINIA 22134-5103

4948-99  
IN REPLY REFER TO:  
1610  
MMER/PERB  
AUG 4 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)  
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF STAFF  
SERGEANT CARMELO [REDACTED] USMC

Ref: (a) SSgt. [REDACTED] DD Form 149 of 3 May 99  
(b) MCO P1610.7C w/Ch 1-6

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 29 July 1999 to consider Staff Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 930625 to 931231 (CH) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report is substantively inaccurate and unjust and will hinder his opportunity for career development/promotion. It is his belief that his overall performance, as well as a nonjudicial punishment (NJP) and court-martial, all stemmed from his deteriorating marriage.

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. The Board stresses and emphasizes that when the petitioner acknowledged the adverse nature of the report, he opted to omit any statement in his own behalf. In so doing, he passively concurred in the accuracy of the evaluation without providing any matters in extenuation and mitigation. The issues and concerns which he now surfaces in reference (a) should have been raised when he was availed of that right. To do so almost six years after the fact, when all parties are no longer co-located and when all arguments are presented from a single perspective, lacks both timeliness and merit. Likewise, and notwithstanding the petitioner's own statement, we find nothing to show that the challenged fitness report is anything other than a fair, objective, and factual evaluation of the petitioners' performance during the stated period.

b. Regardless of the source of the recorded disciplinary actions, the fact remains that both the NJP and court-martial occurred and were properly included.

(3) A03

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)  
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF STAFF  
SERGEANT [REDACTED] [REDACTED] USMC

c. The Board states its position that it cannot and does not operate under the premise that factually accurate fitness reports should be removed simply to enhance competitiveness. To do so would breach the integrity and viability of the entire performance evaluation system.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Staff Sergeant [REDACTED] official military record.

5. The case is forwarded for final action.

[REDACTED]  
[REDACTED]  
Chairperson, Performance  
Evaluation Review Board  
Personnel Management Division  
Manpower and Reserve Affairs  
Department  
By direction of the Commandant  
of the Marine Corps



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
2 NAVY ANNEX  
WASHINGTON, DC 20380-1775

2948-99

IN REPLY REFER TO:

1070

JAM2

14 DEC 1993

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION  
IN THE CASE OF STAFF SERGEANT [REDACTED]  
[REDACTED] U.S. MARINE CORPS

1. We are asked to provide an opinion on Petitioner's request to remove from his Official Military Personnel File (OMPF) all entries related to a nonjudicial punishment (NJP) and a summary court-martial (SCM) he received 1993.
2. We recommend that the requested relief be denied. Our analysis follows.
3. Background. From 25 June 1993 to 31 December 1993, Petitioner was assigned to Communications Company, Headquarters and Service Battalion, 3d Force Service Support Group (HQ SVC Bn, 3d FSSG). On 2 August 1993, Petitioner received NJP for violation of Article 92, Uniform Code of Military Justice (UCMJ). On 2 December 1993, Petitioner was convicted by summary court-martial for violation of Article 86, UCMJ. On 31 December 1993, Petitioner received an adverse fitness report for the period 25 June 1993 to 31 December 1993. The fitness report documented both the NJP and SCM that Petitioner received. Petitioner maintains that the NJP he received was not supported by the evidence. He further maintains that the punishment imposed by the SCM was excessive. As a result, Petitioner claims that the fitness report is substantively inaccurate and unjust, because it refers to the NJP and SCM proceedings, as well as to the underlying misconduct.
4. Analysis
  - a. The Report and Disposition of Offenses (NAVPERS 1626/7) that records the NJP is correct in form and suggests no irregularity in the proceeding itself. The punishment imposed was authorized based on the grade of the officer who imposed it. A review of the record indicates no substantive irregularities in the proceedings themselves, and Petitioner provides no evidence to the contrary. His argument that the punishment is unsupported by the evidence is without merit.

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION  
IN THE CASE OF STAFF SERGEANT [REDACTED]  
[REDACTED] U.S. MARINE CORPS

b. The summary court-martial that Petitioner received on 2 December 1993 is documented in his fitness report of 31 December 1993, section C of which states that "[the accused] was found guilty during Summary Court-Martial for violation of article 86." Petitioner's OMPF is otherwise silent on the details of the proceeding. Petitioner asserts that while he committed the offense, he believed that the sentence was excessive in that "it did not fit the crime" due to the mitigating circumstances. No evidence is offered by Petitioner to indicate that the sentence imposed was not legally authorized, or that the court abused its discretion. Accordingly, this argument is without merit.

c. Lastly, Petitioner maintains that his fitness report for the period during which he received NJP and the SCM was erroneous. Specifically, he requests removal of the report due to "unfair, inaccurate, and unjust markings from the reporting senior that caused [his fitness report] to be an incorrect assessment of his performance and potential service in the Marine Corps." Our review of the fitness report and its contents indicates that it was prepared in accordance with applicable regulations and that Petitioner was afforded the right to comment. Petitioner's argument is without merit.

5. Conclusion. Accordingly, for the reasons noted, we recommend that the requested relief be denied.

[REDACTED] JR.  
Head, Military Law Branch  
Judge Advocate Division